

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1449

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

Docket No. 76-1449

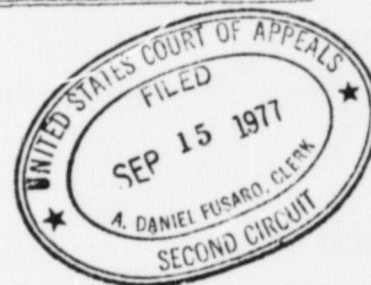
CHARLES P. GREZO, JOSEPH D'AGOSTINO,
SAMUEL EBARE and RICHARD MICHAEL
BEACH,

Defendants-Appellants

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR APPELLANT - EBARE



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ISSUES PRESENTED

1. Whether the Government's proof was insufficient to support the verdict that appellant participated in an illegal gambling business as one who conducted, financed, managed, supervised, directed or owned said business?
2. If the Court reverses the conviction against any of the appealing defendants by reason of insufficiency, should then the convictions against all appellants including Samuel Ebare be reversed and the indictments dismissed?

I

STATEMENT.

The appellant Samuel Ebare was charged with five other individuals with violating the federal gambling statute Section 1955 of Title 18, United States Code, and with conspiracy to violate that section. Named in the indictment, as co-defendants, were the appellants Charles B. Grezo, Joseph D'Agostino, Richard M. Beach and, in addition, two defendants who are not appealing, Louis Camerano and Raymond Czerwinski. All defendants were charged with the substantive offense and conspiracy.

The appellants D'Agostino, Grezo and the defendant Camerano were charged in three additional counts with violating Section 1952 of Title 18 by use of telephone facilities in interstate commerce to disseminate sports line and betting information.

After a jury trial of all defendants before Honorable Lloyd F. MacMahon, United States District Court Judge, serving by designation in the Northern District of New York, the appellants Ebare and D'Agostino and the defendant Czerwinski were convicted of the substantive and conspiracy counts. The appellants Beach and Grezo and the defendant Camerano were convicted on the substantive count but acquitted on the conspiracy count. D'Agostino and Camerano were also convicted on charges under Section 1952 of Title 18.

On December 9, 1976, Ebare was sentenced on each count to imprisonment of one year and one day and to pay a fine of \$5,000.00, such

sentences to run concurrently. The appeal by this appellant was timely filed and bail was continued pending appeal.

STATEMENT OF FACTS.

On the trial it was established that D'Agostino carried on a book-making operation by receiving over the telephone and booking bets on football and basketball games. This operation was clearly in violation of the gambling statutes of the State of New York. It was likewise established it continued for a period in excess of thirty days and that, on occasion, at least, had a gross revenue in excess of \$2,000.00 in a single day. A large number of recorded telephone conversations received in evidence established that D'Agostino informed bettors as to the odds or the "line" and accepted and "booked" bets.

No evidence was produced on the trial to indicate the appellant Ebare ever accepted bets. It was the Government's theory and contention the appellant Ebare was the "boss" and the owner of the D'Agostino gambling operation. The appellant Ebare contends the evidence upon the trial failed to establish the Government's contention and that the proof was insufficient to sustain either count of the indictment against him.

The trial evidence did establish the co-defendant Raymond Czerwinski procured business for D'Agostino and participated in conducting such business. Many recorded telephone conversations attested to that fact. Richard Beach, a friend of the appellant Ebare, was nebulously claimed to hold "a position of trust" in the D'Agostino gambling operation.

It was claimed by one witness Beach had on a few occasions collected bets for D'Agostino and it further appeared Beach was given, on occasion, information concerning the status of the D'Agostino book.

The defendant Camerano was claimed to have supplied the "line" to D'Agostino from Las Vegas by telephone on January 4 and January 6, 1975. These telephone calls were the basis of counts III, IV and V of the indictment. There was no claim Camerano participated in the D'Agostino operation in any other way.

The defendant Grezo, almost daily, by telephone, placed bets with D'Agostino. Grezo claimed to be a bettor and the specifics of his claim in this regard are fully set forth in his brief. The Government claimed Grezo was a bookmaker and that some, at least, of his bets with D'Agostino constituted a "layoff" of bets accepted by Grezo to D'Agostino, another bookmaker. However, the Government claims no exchange of layoff bets by both D'Agostino and Grezo which could be considered in the furtherance of the D'Agostino operation.

POINT I

THE GOVERNMENT'S PROOF FAILED TO ESTABLISH THE GUILT OF THE APPELLANT EBARE.

The Government's proof relating to Ebare was sparse and failed to substantially establish any connection on his part with the D'Agostino book.

James Colloca, of Oswego, New York, who had himself been convicted in Oswego on state bookmaking charges and who testified under a grant of

immunity, stated that in mid-1974, following a business discussion with Ebare concerning a bicycle shop, Ebare informed him he could call D'Agostino at a telephone number in Syracuse if he desired to place bets. (Tr. 69-72, 97, 98, App. 10-13, 22, 23). Colloca testified he, thereafter, phoned in to D'Agostino bets for himself and for some friends who also desired to bet (Tr. 73, App. p. 14). The forwarding of these bets for his friends along with his own, according to Colloca was a matter of accommodation for which he received no profit (Tr. 77, 87-89, 100, 101, App. 15, 17-19, 25, 26). Colloca testified D'Agostino would pay or collect these bets except on four or five occasions when Beach did so (Tr. 79, App. p. 16). Colloca admitted during the same period of time he also placed his own and his friends' bets with local bookmakers in Oswego, depending upon where the "line" was more advantageous (Tr. 90, 92, App. 20, 21). This type of activity, we submit, was merely that of a bettor and in the absence of profit in any fashion to him, does not constitute participation in any required manner in the D'Agostino operation.

If Colloca's activities could be characterized as bookmaking so far as his friends' bets were concerned and the forwarding of those bets to D'Agostino as a "layoff" of bets Colloca had booked (all contrary to his sworn testimony), this procedure was unilateral since Colloca never accepted bets from D'Agostino (Tr. 99, App. p. 24). His testimony of meeting with Ebare in a restaurant in Oswego in the fall of 1974 when both were drinking and had an incidental conversation about unpaid bets due from Colloca to

D'Agostino and the payment of a portion thereof to Ebare, did not establish Ebare to be the owner of the D'Agostino operation (Tr. 103-105, App. pp. 27-29).

James D. Keller, a Syracuse used car dealer, testified in 1974-1975, he placed bets with Czerwinski (Tr. 155, 156, App. p. 30, 31). During the football season he lost \$1600.00 on these bets and needed time to pay (Tr. 160, App. p. 33). Keller told Czerwinski he wanted to talk to Ebare and later did so. In the conversation Ebare asked why Keller wanted to talk to him and told Keller to discuss his problem with Czerwinski (Tr. 162, 239, App. pp. 34, 35). Telephone conversations between Czerwinski and D'Agostino on January 4 and 6, 1975 indicate those defendants regarded Keller's discussion of his losses with Ebare as an effort to have Ebare loan the money to pay Keller's losses. Keller never placed a bet with Ebare (Tr. 159, App. p. 32).

Sam Visconti testified to conversations with Ebare concerning betting in 1972, long before the indictment period (Tr. 273, App. p. 36). His bets during 1974-1975 were with D'Agostino and he had no contact with Ebare (Tr. 277, App. p. 37). This testimony was not urged by the prosecution as any proof of connection of Ebare in the D'Agostino operation.

Leon Cook testified he permitted D'Agostino to use his residence telephone to receive bets in September and October, 1974 (Tr. 309, App. p. 39), but gave no testimony concerning Ebare.

The Government sought to excuse the lack of substantial evidence

against Ebare on the theory Ebare was "insulated" from contact with bettors in the D'Agostino operation. This fanciful theory should not be accepted as a substitute for the required proof necessary to establish Ebare's guilt.

POINT II

IN THE EVENT OF A REVERSAL OF THE CONVICTION OF ANY APPELLANT, THEN THE CONVICTIONS OF ALL APPELLANTS SHOULD BE REVERSED AND THE INDICTMENT DISMISSED.

The trial court submitted the issue of the number of persons involved in the D'Agostino operation to the jury on the Government's contention that "all of the defendants now on trial plus James V. Colloca and Leon Cook, for a total of eight persons" were covered by the statutory requirement of five or more participants (Tr. 898, App. p. 58).

The position of Colloca has already been discussed and his activities, with no profit to himself and as an accommodation to his friends, should not be considered as, in any manner, "conducting" the D'Agostino operation. His classification is clearly that of a bettor.

Leon Cook, the manager of a Syracuse restaurant, placed bets for himself with D'Agostino during the fall and winter of 1974-1975 (Tr. 308, App. p. 38), and gave D'Agostino's telephone number to some friends to enable them to also bet (Tr. 311, App. p. 40). This, again, as with Colloca, falls short of "conducting" the D'Agostino operation and is more accurately described as the activity of a bettor.

The conviction of Grezo, if he was a bettor, should not stand. If

the court considers him to be a bookmaker, his unilateral activity in placing layoff wagers while receiving none in return, is not adequate to establish his guilty participation in the substantive crime charged.

In United States v. Guzek, 527 F. 2d 552, 557, the Court stated:

"As these four recent cases demonstrate, the mere placing of bets by one bookmaker with another or the mere furnishing of line information in and of itself may not be sufficient to establish the interdependence of the bookmakers so as to fuse them into a single business for the purpose of counting each of these participants toward the five persons necessary to establish a violation of Section 1955.

The relationships between the bookmakers must be closely analyzed to ascertain whether they are truly independent or whether their relationships serve to weld them into a single gambling business * * *. As we have noted in earlier cases, the existence of layoff betting, by which the profits of the gambling enterprise are shared and the risk of loss of each is reduced, is an important factor to be considered."

The activity of Camerano in furnishing line information on two dates is not sufficient to consider or to count him toward the necessary five persons. In United States v. Todaro, 550 F. 2d 1300 (Second Circuit - 1977), this Court characterized the activity of the defendant who supplied line information on nine or ten occasions to be "negligible" and "insignificant". This Court held that "inadequate proof was offered that Todaro was one who conducts, finances, manages, supervises, directs, or owns" an illegal gambling operation.

If this Court should determine the conviction of Grezo to be improper and that the acts of Camerano in furnishing "line" information on two dates

under this Court's decision in United States v. Todaro, supra, are an insufficient connection to warrant him to be counted as one of the necessary five individuals who violated the statute, then a situation exists which would require a reversal of the conviction of all appealing defendants. Under such circumstances, only D'Agostino and Czerwinski together with Beach and Ebare, if this Court concluded sufficient evidence on the trial connected them, would remain of the indicted defendants.

As pointed out above, Colloca and Cook did not participate in "conducting" the operation as required by statute.

CONCLUSION.

It is respectfully submitted that the conviction of Samuel Ebare should be reversed, that the indictment be dismissed, that the sentence be vacated.

Respectfully submitted,

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X5457

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Term

-VS-

No.

joined
SAMUEL L. EBARE, *Paul Shoben*

also known as "Sam"

JOSEPH T. D'AGOSTINO, *Shoben*

also known as "Joey"

RICHARD MICHAEL BEACH, *D. Wink*

also known as "Harpo"

CHARLES P. GREZO, *Palmer*

also known as "Sonny"

LOUIS M. CAMERANO *Heck*

RAYMOND CZERWINSKI *Heck*

also known as "Baldy"

Vio. Title 18, U.S.C.,
Sections 371, 1955, 1952 and 2

Filed:

COUNT I

The Grand Jury Charges:

That continuously throughout the period between September 1, 1973 and June 26, 1975, the exact dates being to the Grand Jury unknown, in the Northern District of New York and elsewhere, James V. Colloca and Leon Cook, named herein as co-conspirators but not indicted as defendants, and numerous other persons whose exact identities are to the Grand Jury unknown, and SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, did unlawfully and knowingly conspire, combine and agree together and with each other, to conduct, finance, manage, supervise, direct and own an illegal gambling business, that is, a sports bookmaking operation and parlay business which violated the provisions of Article 225 of the Penal Law of the State of New York and was therefore in violation of Sections 1955 and 2 of Title 18 of the United States Code:

A-1

And, during the period aforesaid, the said defendants committed, among others, the following overt acts in furtherance of the said conspiracy and in order to effectuate the object and purpose thereof:

(1) On or about October 30, 1974, SAMUEL L. EBARE and James V. Colloca met in The Chart Room, Oswego, New York, and had a discussion concerning a debt;

(2) On or about November 5, 1974, JOSEPH T. D'AGOSTINO spent approximately one and one-half hours at the residence of Leon Cook at 214 Gulf Road, Syracuse, New York, conducting the aforesaid illegal gambling business over Cook's telephone;

(3) On or about December 21, 1974, JOSEPH T. D'AGOSTINO had a telephone conversation with CHARLES P. GREZO about matters relating to the operation of the aforesaid illegal gambling business, and in which D'AGOSTINO accepted layoff wagers from GREZO;

(4) On or about January 3, 1975, JOSEPH T. D'AGOSTINO distributed line (or odds) information over the telephone to RAYMOND CZERWINSKI, and they discussed other matters relating to the operation of the aforesaid illegal gambling business;

(5) On or about January 4, 1975, RICHARD MICHAEL BEACH and JOSEPH T. D'AGOSTINO had a telephone conversation in which they discussed the status of the aforesaid illegal gambling business concerning a particular game, and during which D'AGOSTINO gave BEACH the line (or odds) information on numerous sporting events;

(6) On or about January 5, 1975, LOUIS M. CAMERANO telephoned JOSEPH T. D'AGOSTINO from Las Vegas, and CAMERANO gave D'AGOSTINO line (or odds) information on numerous sporting events

A-2

(7) On or about January 6, 1975, JOSEPH T. D'AGOSTINO and SAMUEL L. EBARE had a telephone conversation in which SAMUEL L. EBARE gave JOSEPH T. D'AGOSTINO instructions with respect to the payoff of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

All of which was in violation of Section 371 of Title 18 of the United States Code.

A-3

COUNT II

The Grand Jury Further Charges:

X
That, continuously from approximately September 1, 1973 through June 26, 1975, the exact dates to the Grand Jury being unknown, in the Northern District of New York and elsewhere, SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, together with others who are both known and unknown to the Grand Jury, unlawfully did conduct, finance, manage, supervise, direct and own an illegal gambling business in the form of an unlawful sports bookmaking operation and parlay business which violated Article 225 of the Penal Law of the State of New York, and all of which was in violation of Sections 1955 and 2 of Title 18 of the United States Code.

COUNT III

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 12:28 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish,

A-4

carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity, all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

COUNT IV

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 5:00 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sports events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform

and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

07

The Grand Jury Further Charges:

That, on or about January 5, 1975, at approximately 12:30 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities, between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity --- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce,

procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

JAMES M. SULLIVAN, JR.
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK

A TRUE BILL:

FOREMAN

1 conversation?

2 A Well, my original was that he was -- he asked me if he
3 could find a place so that he can open a bicycle shop.

4 Q Well, what was the nature --

5 A That was the original.

6 Q All right. And then did he say anything to you about
7 taking action?

8 A Not right then and there.

9 MR. SHANAHAN: I object to the form
10 of that, if the Court please.

11 THE COURT: Don't lead, please.

12 BY MR. FISHER:

13 Q Did he tell you anything else during that conversation?

14 A No, that was the only conversation at the time.

15 Q And was there another conversation you had with Mr. Ebare?

16 A Later.

17 Q All right. And where was that?

18 A I would say that was at my store.

19 MR. SHANAHAN: Pardon me?

20 THE COURT: At his store.

21 Q And approximately when was that?

22 A Oh, a few weeks later.

23 Q And what did Mr. Ebare tell you during that conversation?

24 A Well, if I had any action that -- action, why he can get
25 it in for me.

Colloca, by the Government, direct

1 THE COURT: If you have any action,
2 he would get it in for you, is that what he said?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 BY MR. FISHER:

6 Q Now, did you know what he meant by the word action?

7 A Well, baseball action.

8 Q And what does action mean, according to what you under-
9 stood?

10 A Well, being betting action.

11 Q Betting. And did he give you any more information about
12 how your arrangement would be?

13 A Well, just that I could call, and he would put it in.

14 Q Are you saying he gave you the phone number to call?

15 MR. SPANABAY: Wait a minute, I object
16 to that.

17 THE COURT: Yes. Take his answer as
18 it was. Next question.

19 BY MR. FISHER:

20 Q Now, did there come a time when Mr. Ebare introduced
21 you to Mr. D'Agostino?

22 A Yes.

23 Q And what did he say at that time?

24 A Mr. D'Agostino, primarily, he was -- he wanted me to rent
25 an automobile for him.

A-12

1 Q Did you have any discussions about betting?

2 A Not with D'Agostino at the time, no.

3 Q Did you have any such conversations at another time with
4 Mr. Ebare and D'Agostino?

5 A Well, it was just through a phone call, once in awhile.

6 Q Mr. Colloca, did you have an opportunity to testify before
7 the grand jury on June 5th, 1975?

8 A Yes.

9 Q And I'm referring to Exhibits 3523 and 23, page 53.

10 Mr. Colloca, I would ask you to read the grand jury
11 testimony, starting about midway down the page and onto
12 page 54 and ask you if that refreshes your recollection.

13 A Yes, it's true.

14 Q What is true, Mr. Colloca?

15 A That I took football action, too, at the time.

16 Q The question is, did Mr. Ebare --

17 MR. SHANAHAN: I'm sorry to interrupt,
18 but I just can't hear the answer. Would you read back
19 that last one?

20 A Then in two weeks of football.

21 BY MR. FISHER:

22 Q Mr. Colloca, does that refresh your recollection as to
23 whether Mr. Ebare introduced you to Mr. D'Agostino?

24 A Yes.

25 Q It does refresh your recollection?

1 A Now it does refresh my recollection.

2 Q And did Mr. Ebare introduce you to Mr. D'Agostino?

3 A Yes.

4 Q All right. And what did Mr. Ebare say about him at the
5 time he introduced you?

6 A That he would call me, he would call me occasionally.

7 Q That he would call --

8 MR. FISHER: The answer is that he would
9 call him occasionally.

10 Q For what purpose, did he say?

11 A For betting.

12 MR. FISHER: For betting is the answer.

13 Q Now, subsequent to that discussion, did you begin calling
14 the telephone number that Mr. Ebare gave you?

15 A I would call --

16 MR. SHANAHAN: I object to that, that
17 Mr. Ebare gave it to him. I don't understand that as
18 the testimony.

19 MR. FISHER: I believe the testimony was,
20 Mr. Ebare first gave him the number.

21 THE COURT: Did you begin calling
22 whatever number it is?

23 BY MR. FISHER:

24 Q Did you begin calling the number?

25 A Yes.

A-14

1 Q And were these wagers which you took from other people,
2 you accepted from customers of yours?

3 A That would be friends of mine, friends of mine, as far
4 as that is concerned.

5 Q And would the person at the other end of the number accept
6 those wagers?

7 A Yes.

8 Q Now, did you ever receive the line information?

9 A Yes.

10 Q And who did you receive the line information from?

11 A I received it from most anybody. The line would be given
12 to me from somebody.

13 Q Did somebody call?

14 A Somebody called.

15 Q Or did sometimes they come by?

16 A No, they wouldn't come by, they would call.

17 Q Was it the same person who called to give you the line
18 that you called back the bets to?

19 A No.

20 Q It could be a different person?

21 A Yes.

22 Q But was it at the same number?

23 A It would be the same --

24 MR. SHANAHAN: I object to that question.

25 THE COURT: Overruled. Was it the same

1 Q Was it usually the case that they put the money up or they
2 did not put the money up?

3 A Usually the case that they did not put the money up.

4 Q In other words, their credit was accepted and you settled
5 at the end of a period of time?

6 A By me.

7 Q By you, and you were responsible for settling up?

8 A I was responsible.

9 Q Now, did you make any profit from this settling up?

10 A No, I made no profit.

11 Q All right. What did you do with the money that you
12 collected from settling up?

13 A I would turn it over to whoever come to collect it.

14 Q All right. Would somebody come personally to collect it?

15 A Yes.

16 Q All right. And who would come to collect it?

17 A Well, they would say that somebody is coming down to
18 collect it, and it wouldn't be any particular one person.

19 THE COURT: Who would say that they are
20 coming down to collect it?

21 THE WITNESS: Well, they would tell me
22 on the telephone.

23 THE COURT: Did you recognize the voice
24 on the phone?

25 THE WITNESS: Sometimes I -- as far as

1 phone they would be there at a certain time.

2 THE COURT: And that person would come?

3 THE WITNESS: That person would come,
4 or they would tell me to be at a certain place and --

5 THE COURT: But you don't know who called
6 you?

7 THE WITNESS: For sure, I didn't know
8 for sure.

9 THE COURT: Well, what is your best
10 recollection of who called you?

11 THE WITNESS: Well, I would say my
12 best recollection would be Joey.

13 THE COURT: Joey D'Agostino?

14 THE WITNESS: Joey, my best recollection.

15 THE COURT: All right, go ahead.

16 BY MR. FISLER:

17 Q Mr. Colloca, did the defendant, Michael Beach, ever come
18 around to collect?

19 A Yes.

20 MR. WEINSTEIN: Your honor, I object.

21 THE COURT: Overruled, under the
22 circumstances. Go ahead.

23 A Yes.

24 Q Approximately how often did he come around to collect?

25 A Oh, maybe about five, four, five, six times.

1 CROSS-EXAMINATION

2 BY MR. SHANAHAN:

3 Q Mr. Colloca, would you please try to keep your voice up
4 so that I can hear you back here.

5 A Yes.

6 Q Now, you tell us that you are in the dry cleaning business?

7 A Yes.

8 Q And you were during the years of 1974 and 1975?

9 A Yes, I was.

10 Q How long have you been in that business?

11 A I would say 30 years.

12 Q 30 years?

13 A 30 years.

14 Q And you had a place of business, a store, or a shop where
15 you received dry cleaning and where you did the cleaning
16 work?

17 A Yes.

18 Q Is that in the downtown area of Oswego?

19 A The downtown area in Oswego, right.

20 Q And has that been your location for quite some period of
21 time?

22 A Yes.

23 Q All right. Now, you say that, if I understood you cor-
24 rectly, that during the years of 1974 and 1975 you took
25 bets?

- 1 A Yes.
- 2 Q Is that right?
- 3 A Yes.
- 4 Q And do I understand correctly that you say you took these
- 5 bets from your friends?
- 6 A That's right.
- 7 Q And these were people then that you knew?
- 8 A Right.
- 9 Q In the city of Oswego, would that be right?
- 10 A Right.
- 11 Q Well, now, let me ask you: did those people come to you
- 12 and ask you to bet their money for them, is that what you
- 13 meant?
- 14 A That is what they did.
- 15 Q And did you bet, yourself?
- 16 A I bet, myself.
- 17 Q Well, it is important for us to understand precisely how
- 18 this happened now. Am I to understand that people that
- 19 you knew would come to you and they would tell you they
- 20 wanted to bet on some sporting event?
- 21 A Right.
- 22 Q And that they asked you to place their bets for them?
- 23 A Right.
- 24 Q Is that what happened?
- 25 A Yes.

- 1 Q So that you would take the bets that they gave you, and
2 with your own money, you would place those bets?
- 3 A Right.
- 4 Q Is that what you are telling us that happened?
- 5 A That is the way it happened.
- 6 Q You are sure about that?
- 7 A Yes, this is the way it happened.
- 8 Q Now, did you charge these friends of yours any money to
9 place their bets as you are telling us?
- 10 A I didn't charge them myself, no.
- 11 Q You didn't charge them any money for betting?
- 12 A Not for me, no.
- 13 Q All right. Now, there was a time, was there not, Mr.
14 Colloca, when there was a wiretap on your telephone in
15 your place of business in Oswego?
- 16 A Right.
- 17 Q Is that right?
- 18 A Right.
- 19 Q And when was that, if you can tell us?
- 20 A I don't remember exactly what days they were.
- 21 Q Well, was it in the latter part of 1974, early '75?
- 22 A I would say the latter part of '74.
- 23 Q Latter part of '74. And was that a New York State police
24 wiretap?
- 25 A That was a Federal -- I had a Federal tap and I had a

1 New York State police tap, also.

2 Q Well, are you telling us that there was a Federal tap
3 and also a New York State police tap?

4 A Yes

5 Q You mean at separate times?

6 A Two separate times, or th could have been the same time.

7 Q I beg your pardon?

8 THE COURT: Either, he said.

9 A I said it could have been at separate times or it could
10 have been at the same time. I don't know exactly, I
11 don't remember exactly.

12 Q I see, all right. Now, let me ask you, when friends of
13 yours would come and tell you they wanted to bet, as you
14 have described to me, did you bet with bookmakers up in
15 Oswego?

16 A Yes, I did.

17 Q And with how many bookmakers did you bet in Oswego?

18 A Two.

19 Q Two. And who were they, please?

20 A Do I have to answer this?

21 Q I'm afraid you will have to tell us, unless the Court
22 excuses you from doing it.

23 THE COURT: Tell him.

24 A Well, I bet with John Spaino.

25 Q And who else?

- 1 who were engaged in gambling in Oswego, correct?
- 2 A Well, they were engaged, yes.
- 3 Q In one form or another?
- 4 A In one form or another.
- 5 Q All right. Now, when was it that you were placing bets
- 6 with Mr. and Mrs. Spaino?
- 7 A It was during the same time.
- 8 Q During the same time period that you have testified about
- 9 here?
- 10 A Right.
- 11 Q Well, do I understand then that some friend of yours or
- 12 friends of yours came and wanted you to bet, that you
- 13 would maybe decide to place that bet with Spaino or
- 14 maybe you would decide to place it with D'Agostino?
- 15 A Wherever the line was the best.
- 16 Q Well, all right. Now, let me ask you: in connection
- 17 with betting with Spaino, did you get a line from them?
- 18 A Yes.
- 19 Q And that would be the point spread?
- 20 A That would be the point spread, right.
- 21 Q Between the two different teams that were in come contact,
- 22 would that be right?
- 23 A Right.
- 24 Q And do I understand that on the telephone from D'Agostino,
- 25 you also got a line spread?

1 the subject of his opening a bicycle shop?

2 A Right.

3 Q Would that be so?

4 A Right.

5 Q And he wanted you to look for some location in the City
6 of Oswego where he could open a shop?

7 A Right.

8 Q And did you in fact go and interview some owner of a
9 building where a bicycle shop had been in operation at an
10 earlier date?

11 A Right.

12 Q And that was with a view of attempting to rent that shop
13 for Ebare, was it?

14 MR. FISHER: Objection, irrelevant.

15 THE COURT: Overruled.

16 A Yes.

17 BY MR. SPANAHAN:

18 Q Now, I think you said that after that business about the
19 bicycle shop, there came a time when you and Ebare had
20 a talk in your store?

21 A Right.

22 Q And at that time, the talk was where you could place bets?

23 A Right.

24 Q And that he indicated that he would try to get bets in
25 for you, if you wanted to bet?

Colloca, by the Government, cross

1 A Right.

2 Q With somebody else, is that right?

3 A Right, with somebody, he could get the bets in for me.

4 Q And you say that following that, on some occasion he
5 introduced you to Joey D'Agostino?

6 A Yes.

7 Q Had you ever known D'Agostino before that time?

8 A No, no.

9 Q Now, did D'Agostino ever pay you any money for getting
10 bets for him?

11 A D'Agostino didn't pay me any money.

12 Q Did Leare ever pay you any money?

13 A Leare never paid me no money.

14 Q And you say your customers didn't pay you?

15 A My customers did pay, yes.

16 Q I beg your pardon?

17 A My customers did pay.

18 Q I don't know what you're saying, did or did not.

19 A They did pay, if they lost, yes.

20 Q If they lost, they paid?

21 A And if they won, they got paid.

22 Q But what I am getting at is, they didn't pay you any
23 profit over and above their loss?

24 A No.

25 Q Now, in the course of time, as I understand it, you called

- 1 some telephone number that you had been furnished?
- 2 A Right.
- 3 Q Was that a Syracuse telephone number?
- 4 A Well, it would be in the Syracuse area.
- 5 Did you know the location of the telephone you were calling?
- 6 A No, I did not.
- 7 Q When you would call, did you know with whom you talked?
- 8 A I talked to different ones.
- 9 Q I didn't catch that.
- 10 A I talked to different people.
- 11 Q You talked to different people?
- 12 A Sometimes I would talk to --
- 13 Q All right. And as I understand it, on an occasion, you
- 14 would get the line?
- 15 A I would get the line.
- 16 Q And then later you might call and indicate what the bets
- 17 were?
- 18 A Right.
- 19 Q Did you ever accept any bets back from this telephone that
- 20 you called?
- 21 A No, no, I never --
- 22 Q Let me ask you: do you know what the term laying off bets
- 23 means?
- 24 A Yes.
- 25 Q Now, do you agree with me that if a person is a bookmaker

- 1 and he accepts bets, that he may lay off part of that
2 action with somebody else?
- 3 A Yes.
- 4 Q Is that what you understand that lay off is?
- 5 A I understand the lay off, yes.
- 6 Q You understand the term?
- 7 A Yes.
- 8 Q Now, as you have described it, do you say that you were
9 laying off bets with this telephone number?
- 10 A Well, I just put the bets in.
- 11 Q I beg your pardon?
- 12 A I put the bets in.
- 13 Q You put the bets in?
- 14 A As they --
- 15 Q But these bets that you put in, did you book them yourself
16 in the first instance?
- 17 A I put them in. I put the bets in for myself as well as
18 friends of mine.
- 19 Q I understand what you are telling me, but when these
20 friends of yours would come to you and they wanted to bet,
21 say, on a super bowl game, just as an illustration --
- 22 A Right.
- 23 Q -- they wanted to bet on Miami --
- 24 A Right.
- 25 Q -- would you book that bet yourself?

1 A I wouldn't say I would book it myself.

2 Q What you would do is call it in, whatever you wanted to
3 bet?

4 A That's right.

5 Q Would that be right?

6 A Right.

7 Q And that is the only way you ever did it, is that what
8 you mean?

9 A That is the way I did it.

10 Q Did you ever get line information from any place other
11 than this telephone in the Syracuse area and other than
12 Spaino?

13 A I got a line from -- I got a line from the Spainos, and
14 I got a line from this, from the Syracuse area, and that's
15 all.

16 Q You never got any other line?

17 A No.

18 Q Did you ever use any newspapers or --

19 A I used newspapers to guide myself.

20 Q And did these newspapers contain a line?

21 A Right, and I also used -- I also used tip sheets, as they
22 call it.

23 Q Subscriptions?

24 A Tip sheets.

25 Q Sporting magazines?

1 A I would say '74.

2 Q Now, on that occasion, when you say that you saw Ebare at
3 that location, what part of the building did you see him
4 in? Was this the bar or at a table in the restaurant, or
5 what?

6 A The bar.

7 Q Was there anyone else present there at that time?

8 A There was a person present there at that time, but I
9 don't know who it was, and I don't remember who it was.

10 Q How long a period of time were you and Ebare together on
11 that occasion?

12 A Oh, we were there, we were together maybe about an hour,
13 between an hour and two hours.

14 Q And were both of you --

15 A We had a few drinks there.

16 Q You were both drinking at the bar during that period of
17 time were you?

18 A Right.

19 Q And had you, on other occasions, been in restaurants and
20 in bars with Ebare in the past?

21 A Yes, I met him in the Pussycat, too.

22 Q No, I'm talking about before this Chart Room.

23 A No.

24 Q That was the first time you ever met him at a bar or a
25 restaurant?

- 1 A At a restaurant, yes.
- 2 Q You testified before the grand jury in this case, did you
- 3 not?
- 4 A Yes, I did.
- 5 Q Well, didn't you give some testimony that had to do with
- 6 you didn't want Ebare to be picking up the check, so you
- 7 gave him some money?
- 8 A I also did that, too.
- 9 Q Well, when was that, before this Chart Room or after, or
- 10 what?
- 11 A That was on another occasion. I also -- I insisted that
- 12 I would pay the check.
- 13 Q All I am trying to find out is, were you in some restaurant
- 14 or some bar with him on some occasion before this Chart
- 15 Room?
- 16 A Yes, yes.
- 17 Q So this Chart Room wasn't the only time you ever met him
- 18 in a restaurant?
- 19 A That's right.
- 20 Q And it wasn't the only time you ever had a drink with him?
- 21 A That's right.
- 22 Q And were you and Ebare on friendly terms?
- 23 A Yes, we were.
- 24 Q Now, did I understand you to say at some point in your
- 25 direct examination, I'm not sure I heard it correctly,

1 but did I understand you to say that you paid him \$1200
2 at some time?

3 A No, I paid him 600.

4 Q You said what?

5 A I paid him \$600.

6 Q You paid him \$600?

7 A That's what I paid.

8 Q What was this talk about \$1200? I couldn't hear what you
9 were saying.

10 A Well, this is what I owed.

11 Q I beg your pardon?

12 A That is what I owed.

13 Q That is what you owed?

14 A Yes.

15 Q And what you are talking about now is what you owed for
16 bets for friends?

17 A That's right.

18 Q Well, did you owe it or did the friends owe it?

19 A Well, a combination.

20 Q A combination?

21 A A combination.

22 Q Now, in connection with your appearing as a witness before
23 the grand jury, you did appear back last summer, the
24 summer of '74, did you not, before the grand jury in this
25 case?

1 Q Could you point him out for us, please?

2 A The man on the end over there.

3 THE COURT: Let the record reflect he
4 has identified the defendant.

5 Q And are you acquainted with the defendant, Raymond
6 Czerwinski?

7 A Yes.

8 Q And do you see him in the courtroom today?

9 A Yes, next to Sam.

10 Q The gentleman --

11 THE COURT: Which one, from the left or
12 right?

13 THE WITNESS: Second man from the left,
14 right, standing.

15 THE COURT: Let the record reflect he
16 has identified the witness. Proceed.

17 Q Now, during 1974-1975, did you place bets on the outcome
18 of sporting events with anybody?

19 A Yes, I did.

20 Q And who did you place bets with?

21 A Ray -- how do you pronounce it, Czerwinski?

22 Q Czerwinski?

23 A Czerwinski.

24 Q Do you address Mr. Czerwinski by nickname?

25 A Baldy.

Keller, by the Government, direct

1 Q To your knowledge, do others address him by the nickname
2 Baldy?

3 A I believe so.

4 Q And during this betting period, approximately how much
5 did you bet on a weekly basis with Mr. Czerwinski, or
6 give us a range, if you can.

7 A I have been trying to search that over in my mind. Maybe
8 a couple hundred, 300, sometimes.

9 Q Per week or per bet?

10 A I'm not really positive on the amounts that I bet.

11 Q All right. And were these bets on what, football games?

12 A Yes, sir.

13 Q And basketball?

14 A No.

15 Q And did you use a line information, did you use a line to
16 place these bets?

17 A By line, you mean a point per team?

18 Q Point spread, yes?

19 A Yes.

20 Q And where did you get the point spread?

21 A I believe I get them from Baldy.

22 THE COURT: I'm sorry, I couldn't hear
23 the answer.

24 MR. FISHER: He said, I believe I got
25 it from Baldy. Baldy, referring to Mr. Czerwinski.

1 A Okay.

2 Q Mr. Keller, was there a surcharge or an extra amount of
3 money paid on losing bets by you to Mr. Czerwinski?

4 A You mean was there interest charged or was there --

5 Q I will give you an example. If you made a \$100 bet with
6 Mr. Czerwinski -- first of all, would you put the money
7 up front or would he take your credit?

8 A If I put the money up front, it would cost me \$110 to
9 win \$100.

10 Q In other words, what if you lost that \$100 bet, how much
11 would you have to pay?

12 A \$110.

13 Q And if you won that \$100 bet, how much would you collect?

14 A \$100.

15 Q Now, did you ever place any bets with the Defendant Ebare?

16 A No.

17 Q By the way, were you acquainted with the defendant,
18 Michael Beach, Richard Michael Beach?

19 A Yes.

20 Q Do you see him in the courtroom?

21 A Yes.

22 Q Would you point him out to us, please?

23 A Third from the left.

24 THE COURT: Let the record reflect he has
25 identified Mr. Beach.

1 Q Now, during the fall, football season, 1974-75, did you
2 lose a quantity of money on betting?

3 A Yes, I did.

4 Q Approximately how much did you lose?

5 A Approximately \$1600.

6 Q And were you able to pay the \$1600?

7 A No.

8 Q Now, what did you do about this debt?

9 A I tried to make arrangements to pay it over a period of
10 time.

11 Q Did you ask Mr. Czerwinski that you wanted to discuss the
12 matter with the Defendant Ebare?

13 MR. PAPPAS: Objection.

14 MR. SHANAHAN: Objection.

15 THE COURT: Sustained.

16 BY MR. FISHER:

17 Q Mr. Keller, did you ever have a discussion with the
18 Defendant Czerwinski about the \$1600 bet?

19 A Yes, I did.

20 Q And what did you say?

21 A I said it would be difficult for me to pay it at that time
22 and I would like to pay it over a period of time.

23 Q And what did he say, do you recall?

24 A No.

25 Q Did you say anything else to Mr. Czerwinski at that time?

Keller, by the Government, direct

- 1 Q And approximately when was that?
- 2 A January '75, I believe it was.
- 3 Q Do you recall where?
- 4 A Yes, my car lot.
- 5 Q And was anybody else present besides you and Mr. Ebare
- 6 at this discussion?
- 7 A Mike Beach.
- 8 Q Now, could you tell us what you said to Mr. Ebare during
- 9 this discussion?
- 10 A I said that I had made some bets with Baldy and I would
- 11 like to make arrangements to pay them over a period of
- 12 time.
- 13 Q What did Mr. Ebare say?
- 14 A Something to the reply of, why did you call me here?
- 15 Q And what did you say?
- 16 A I thought that he was the man to talk to.
- 17 Q What did he say?
- 18 A I think he told me to take it up with Baldy.
- 19 Q I am going to show you the bottom of page 16 and the
- 20 top of page 17 of your testimony, and see if that
- 21 refreshes your recollection.
- 22 A Right, okay, this part.
- 23 Q Okay, let me ask, does that refresh your recollection?
- 24 A This here down here, this is what you want me to read?
- 25 Q And the top of page 17.

- 1 that you told Ebare at that time that you made some bets
2 with Baldy and that you would like to pay them over a
3 period of time.
- 4 A That's true.
- 5 Q Would that be true?
- 6 A Yes.
- 7 Q And you tell us that previous to that time you had talked
8 to Czerwinski or Baldy, he said to you, that would be
9 all right, correct?
- 10 A I am not positive that it was previous to that or not.
- 11 Q Well, I understood you to say just a minute ago that you
12 talked to Czerwinski, told him you wanted some time
13 because of your poor season, poor business season?
- 14 A Yes, I did.
- 15 Q And that he said it would be all right?
- 16 A Yes.
- 17 Q That is so, is it, all right. Now, I think that you
18 told us yesterday that Ebare then said to you, well, why
19 are you calling me, or why are you talking to me, is
20 that right?
- 21 A He told me to see Baldy.
- 22 Q And he told you to see Czerwinski, would that be so?
- 23 A Yes.
- 24 Q And that was the substance of that conversation, was it?
- 25 A Approximately, yes.

1 Q Three years. So that you would have become acquainted
2 with Mr. Ebare then in the year of 1972, would that be
3 right?

4 A Approximately.

5 Q All right. And you have indicated that in the fall of
6 1974 and early winter of '75, the football season of that
7 year, you were betting, would that be right?

8 A Yes.

9 Q All right. And how long before that had you been betting?

10 A With Mr. Ebare?

11 Q How long had you been betting, first of all?

12 A How long? A long time, years.

13 Q A matter of years?

14 A Yes, sir.

15 Q Had you first bet with Ebare in 1972?

16 A Approximately, yes.

17 Q And when you testified before the grand jury as to how
18 you started betting and your talk with Ebare, was that
19 something, as a matter of fact, that happened back in
20 the year of 1972 that you were telling about?

21 A Yes.

22 Q All right. Now, when you were betting in 1974 and '75,
23 because that is what we are interested in here, were you
24 making your bets on the telephone?

25 A Yes.

Visconti, by the Government, cross

1 Q And are those answers correct?

2 A Yes.

3 Q Now, you have indicated to us previously that you testified
4 before the grand jury in May or June of 1975, and do you
5 recall now when it was that you had last seen Sam Ebare
6 before you testified before the grand jury?

7 A When I saw him?

8 Q When you would see him last before that.

9 A No, I don't recall.

10 Q Do you recall testifying before the grand jury that the
11 last time you saw him was in a bowling alley, maybe last
12 winter, do you recall exactly?

13 A That could be correct. I don't remember, I don't have it
14 written down.

15 Q And do you recall saying that you had not talked to Ebare
16 on the telephone for a year?

17 A Yes.

18 Q Or for a long time?

19 A Yes.

20 Q And that the person that you had talked to on the telephone
21 was Joe D'Agostino?

22 A Yes.

23 Q And when you were before the grand jury, were you asked if
24 Sam Ebare stopped at your store, your grocery store?

25 A He used to shop there occasionally, yes.

Cook, by the Government, direct

1 Q On the far right?

2 A On my far right, yes.

3 MR. FISHER: Let the record reflect the
4 Defendant D'Agostino has been identified.

5 THE COURT: Yes.

6 Q Are you acquainted with the Defendant Samuel Ebare?

7 A Yes.

8 Q Is he in this courtroom?

9 A Yes.

10 Q Could you point him out to us, please?

11 A Against the wall.

12 Q Which one?

13 A In the blue suit, blue tie.

14 MR. FISHER: Let the record reflect --

15 THE COURT: Yes.

16 Q During the fall of 1974, going on into the winter of 1975,
17 did you have any kind of arrangement with the Defendant
18 D'Agostino with respect to betting?

19 A Yes.

20 Q What was your arrangement?

21 A That I bet him.

22 Q How did you bet?

23 A Some was in person and some was over the telephone.

24 Q How did you get the telephone number to call?

25 A It was my own telephone.

Cook, by the Government, direct

1 Q How did you know the number to call? Was the Defendant
2 D'Agostino on your telephone?

3 A Yes, he was.

4 Q For a period of time?

5 A Yes.

6 Q When was this?

7 A That fall, September or October.

8 Q Of 1974?

9 A Yes, sir.

10 Q And during what hours would he use your telephone?

11 A At night. I am not sure because I go to work at 4 or
12 5 o'clock in the afternoon. He was there during the day,
13 usually at 12, 1 o'clock.

14 Q And did he ever tell you what he was using the telephone
15 for?

16 A Well, I found out what it was, yes.

17 Q How did you find out?

18 A I overheard the --

19 MR. SEANAHAN: Objection to how he found
20 out.

21 THE COURT: Sustained.

22 BY MR. FISHER:

23 Q Did you overhear any conversations of the Defendant
24 D'Agostino while he was using the telephone?

25 A Yes.

1 A A few times I did, yes.

2 Q Did you hear --

3 A I didn't hear what they said, no. I heard what he said.

4 Q Well, what else did he say besides what you just told us
5 -- withdrawn.

6 Did he have papers or records or things
7 around him that he was writing on?

8 A Yes.

9 Q Now, did you know some of the bettors that were dealing
10 with the defendant D'Agostino?

11 A Some were my friends, yes.

12 Q And did you give any of these bettors your telephone
13 number?

14 A Yes.

15 Q For what purpose?

16 A To place a bet.

17 Q With who?

18 A With Joe.

19 Q And did you ever give any of these bettors any line
20 information?

21 A If someone asked me, you know, I, myself, that such and
22 such a game was such and such a point spread, you know,
23 nothing regular.

24 Q To your knowledge, did any of these bettors ever meet
25 personally with Joe?

1 very important for the people of the community.
2 Please don't make the mistake and please don't be
3 deceived. Don't be confused. Don't go back and, in
4 a cloud of confusion, be diverted from the truth and
5 just say, "Well, I am confused and we will find them
6 not guilty."

7 Follow the Judge's instructions and
8 listen carefully. Use your knowledge of the evidence
9 and use your plain common sense to put it together.

10 It is submitted that when you do, you
11 will return a verdict of guilty.

12 Thank you very much.

13 THE COURT: Ladies and gentlemen of the
14 jury: It now becomes my function at this stage of the
15 trial to instruct you on the law that governs your
16 decision in this case. Throughout their closing
17 arguments, all of the lawyers, here and there,
18 instructed you on the law. When they did that, they
19 were out of their province. I am the exclusive judge
20 of the law. I permitted them to tell you something
21 about the law because in this kind of a case it is almost
22 impossible to discuss the evidence without relating it
23 to the legal issues involved.

24 But you must bear in mind that if what
25 they said about the law differs from what I say about

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it, you must reject what they said and apply the law as I give it to you.

Now, just as I am the exclusive judge of the law, you and you alone are the exclusive judges of the facts. You and you alone decide what witnesses you will believe, and you and you alone decide how much of a witness's testimony you will believe and how much of it you may wish to reject. You and you alone decide what weight, what value, what conclusions, what inferences you draw from the evidence and, of course, ultimately you decide the guilt or innocence of each defendant on each count in this indictment.

Now, you are not to conclude from any rulings that I have made throughout this trial, or any questions that I may have asked, that I have any opinion one way or the other as to whether any defendant is guilty or not guilty of any of the charges made against him in this indictment. That decision, as I have told you earlier, is exclusively up to you.

Now, how do you go about finding the facts? Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence. Consider the testimony of all of the witnesses, both on direct and on cross-examination. Sift out what you believe, weigh it in the scale

1 of your reasoning powers and common sense, and draw
2 such conclusions as your good, everyday common sense
3 tells you that the evidence supports and justifies
4 and decide just where the truth lies in this case.

5 Now, in this connection all evidence is
6 of two general types; direct evidence and circumstantial
7 evidence. Evidence is direct when the facts are shown
8 by exhibits which are admitted into evidence, or when
9 sworn to by witnesses who have actual knowledge of
10 them from something that they have learned through the
11 exercise of one of their five fundamental senses, such
12 as sight, hearing, taste, smell and touch.

13 Circumstantial evidence simply means the
14 drawing of a logical conclusion from other facts that
15 are shown by direct evidence.

16 The classical example of circumstantial
17 evidence is in Daniel Defoe's story about Robinson
18 Crusoe. When Crusoe saw the footprint on the sand and
19 knew that it was not his own, the only logical con-
20 clusion to draw was that another human being was on
21 the island.

22 Now, not all circumstantial evidence
23 calls for such a compelling and absolutely certain
24 conclusion. But I am sure that you are all familiar
25 with the process. We use it in our daily lives. We

1 draw conclusions based on our common sense and ex-
2 perience from other connected facts and the process is
3 no different here.

4 Now, it is your memory of the evidence
5 that controls here. It is not the way I remember it
6 and it is not the way counsel remembers it and I have
7 no intention here of reviewing this evidence. I know
8 that it is fresh in your mind. If your memories of
9 the evidence squares with what the lawyers told you
10 yesterday, as their memory of it, you may accept what
11 they said. But if you have a different recollection
12 of the evidence you are bound by your oath to reject
13 what they said, and rely on your own memory.

14 Now, when I say your own memory, I mean
15 your collective memory. One of you can help another
16 to stimulate his memory; to help refresh his
17 recollection. Sometimes jurors are only out a few
18 minutes, and following the script that they see on TV
19 every night, some juror sends a note and says he wants
20 to have the testimony of witness A or witness B, or
21 sometimes four or five witnesses reread.

22 Now, in that connection, there is no
23 transcript of this testimony at all. It all rests in
24 those stenotype notes which you see Mr. Sheffer taking
25 there, and it takes time to find it. We can do it if

1 it is necessary, and if any of you strongly feels and
2 sends a note through your foreman that you want some
3 testimony reread, we can do it. But it takes time,
4 and before you resort to that process, please try to
5 help stimulate and refresh each other's memory. It
6 is your collective memory of the evidence that controls.

7 Now, William L. Holmes, a Special Agent
8 of the FBI, was allowed to testify as an expert on
9 the bookmaking or gambling business. An expert may
10 testify and give his opinion on a subject concerning
11 which he has some special knowledge. This is allowed
12 on the theory that the advice of one experienced and
13 versed in a technical or a special subject will help
14 the jury in reaching its decision. You may consider
15 the expert's qualifications and opinion, and weigh
16 his reason, if any, and give his testimony such weight
17 as you feel it deserves. An expert opinion is purely
18 advisory and you may reject it entirely if in your
19 judgment the reasons given are not convincing. That
20 determination rests with you.

21 Now, one of your most important functions
22 is to decide which witnesses you will believe, and this
23 is so as to every witness, whether called by the
24 government, whether a government agent or whether a
25 witness called by the defense.

1 You are not to be influenced by the
2 number of witnesses called, or by the length of the
3 trial. You are concerned not with the quantity of the
4 evidence, but with the quality of the evidence. The
5 first test which you should apply in determining the
6 truthworthiness of a witness is to measure what he
7 says against your plain, everyday, common sense. You
8 are not bound to believe unreasonable statements, or
9 to accept testimony that defies your common sense or
10 insults your intelligence, just because the statements
11 are made under oath in a public courtroom.

12 You saw the witnesses in this case. In
13 deciding whether to believe a witness you should
14 consider his conduct and his manner on the stand. I
15 saw you watching these witnesses with particular care
16 as they were testifying. Obviously, you were sizing
17 them up. How did the witness impress you? Was the
18 witness being frank with you? Was his version of the
19 evidence straightforward? Was he trying to conceal or
20 hold back some testimony? Was he just parroting
21 answers? Does he have any motive to testify falsely?
22 Is he interested in any way in the outcome of this
23 case? How strong or weak was his memory of important
24 events? Did he forget the unforgettable?

25 In short, can you rely on him?

1 Can you trust him? Was he hostile or friendly toward
2 either side in this case?

3 You ought to consider his opportunity to
4 know the facts about which he testified and the
5 probability or improbability of what he said in light
6 of the totality of the circumstances here. How does
7 his testimony add up when considered with all of the
8 other evidence? How far does his story check out with
9 the recordings and with documentary evidence? Are
10 there any inconsistencies in his testimony and, if so,
11 how important are they?

12 Now, if you find that any witness has
13 deliberately and wilfully lied with respect to any
14 material fact in his testimony offered at this trial,
15 you may follow either one of two courses: You may
16 accept as much of the witness' testimony as you
17 believe, or you may reject, if you wish, his entire
18 testimony.

19 Now, none of the defendants took the
20 stand and testified in this case. A defendant is not
21 required to take the stand and testify in his own
22 behalf. He has no burden of proof whatever to sustain
23 in this case. Each defendant has denied the charges
24 made against him by his plea of not guilty, and he is
25 presumed to be innocent. The fact that he has not

1 testified cannot be taken into consideration by you
2 in any manner. You may not permit that fact to weigh
3 in the slightest degree against the defendant, nor
4 should that fact even enter into your discussions or
5 your deliberations in any way.

6 Now, before discussing the crimes
7 charged here, I want to remind you that an indictment
8 is a mere accusation. It is not evidence of the truth
9 of the charge made and you are to draw no inference of
10 guilt from the mere fact that the defendant has been
11 indicted. An indictment simply means that the
12 defendant has been accused of a crime and, as I told
13 you earlier, each defendant here has denied the charges
14 made against him by his plea of not guilty, and he has
15 no burden of proof whatever to sustain in this case.
16 He is under no obligation to produce any witnesses.
17 He is presumed to be innocent, and this presumption of
18 innocence continues throughout the trial and during
19 the deliberations of the jury. This presumption of
20 innocence is overcome when and only when the
21 government establishes the guilt of a defendant beyond
22 a reasonable doubt.

23 Now, what do I mean by beyond a
24 reasonable doubt? As the phrase implies, a reasonable
25 doubt is a doubt that is based upon reason, a reason

1 which appears in the evidence or in the lack of
2 evidence. It is not some vague, speculative, imaginary,
3 conceivable doubt, nor a doubt based upon emotion,
4 sympathy, or prejudice, or upon what some juror might
5 regard as an unpleasant duty.

6 The government is not required to prove
7 a defendant guilty beyond every conceivable or possible
8 doubt, nor to an absolute or mathematical certainty,
9 because such measure of proof is usually impossible in
10 human affairs.

11 You should review all of the evidence as
12 you remember it. Lift out what you believe. Discuss
13 it, analyze it; weigh and compare your view of the
14 evidence with your fellow jurors. If that process
15 produces a solemn belief or conviction in your mind
16 such as you would be willing to act upon without
17 hesitation if this were a matter of importance to your-
18 self, then you may say that you have been convinced
19 beyond a reasonable doubt.

20 On the other hand, if, after going
21 through that process, your mind is wavering or is so
22 uncertain that you would hesitate before acting if
23 this were an important matter of your own, then you
24 have not been convinced beyond a reasonable doubt, and
25 your verdict must be not guilty.

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Now, the indictment in this case contains five counts. Each of those counts charges a separate offense or crime, and each count must be considered and decided by you separately.

The indictment names six defendants, all of whom are on trial before you. They are Samuel L. Abare, also known as "Sam;" Joseph D'Agostino, also known as "Joey;" Richard Michael Beach, also known as "Harpo;" Charles E. Grezo, also known as "Sonny;" Louis M. Camerano; and Raymond Czerwinski, also known as "Baldy."

Now, the guilt or non-guilt of each defendant must be determined by you separately as to each count in which he is named in this indictment. Although, as I will explain to you shortly, in considering a defendant's guilt or non-guilt, you may have to determine the nature of the participation, if any, of other persons, and this is particularly true when I come to discuss Count II, and when we discuss Count I.

Now, in the determination of guilt or non-guilt, you must bear in mind that guilt is personal. There is no such thing under our system of justice as guilt by mere association. The guilt or non-guilt of the defendant on trial before you must be determined

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separately with respect to him, solely on the basis of the evidence presented against him or on the lack of evidence. Let us turn to the specific charges now against these defendants, and we will first discuss Count II, because all of the remaining counts are based on the legal principles and concepts which apply to Count II.

Count II of the indictment charges each of the defendants on trial with violating a law of the United States, which makes it a crime for anyone to conduct, finance, manage, supervise, direct or own all or part of an illegal gambling business.

In order to convict the defendant whom you are considering on Count II, the government must prove the following three facts beyond a reasonable doubt:

First, that the gambling business must be in violation of the law of the State of New York.

Secondly, that it must have five or more persons involved in its conduct, and third, it must be in substantially continuous operation for more than 30 days, or have a gross revenue of \$2,000 or more in a single day.

Now, the first fact which the government must prove beyond a reasonable doubt is that the

1 business which was being operated was an illegal
2 gambling business. The term "an illegal gambling
3 business" means a business which is a violation of the
4 law of the State of New York, since there is no
5 dispute here that the sports bookmaking operation and
6 parlay business involved operated in the Northern
7 District of New York and elsewhere.

8 Now, the New York law provides that a
9 person is guilty of promoting gambling in the second
10 degree when he knowingly advances or profits from
11 unlawful gambling activity. You will note that I have
12 said that a defendant must knowingly advance or profit
13 from illegal gambling activity. The indictment
14 charges that the defendant acted unlawfully and
15 knowingly. Knowingly does not mean that a defendant
16 must be aware that his conduct is criminal or that it
17 violates either state or federal law. It simply means
18 that he must have known what he was doing, that he was
19 acting voluntarily, deliberately and on purpose, and
20 not because of mistake, accident, carelessness or
21 other innocent reason.

22 Unlawfully or illegally simply means
23 that the act which the defendant is doing is prohibited
24 by law.
25

Now, a person advances gambling activity

1 when, acting other than a player, he engages in conduct
2 which materially aids any form of gambling activity.

3 A person profits from gambling activity
4 when, other than as a player, he accepts or receives
5 money or other property pursuant to an agreement or
6 understanding with any person, whereby he participates
7 or is to participate in the proceeds of gambling
8 activity.

9 Now, a player means a person who engages
10 in any form of gambling solely as a contestant, or
11 bettor, without receiving or becoming entitled to
12 receive any profit therefrom, other than personal
13 gambling winnings, and without otherwise rendering any
14 material assistance to the establishment, conduct or
15 operation of the particular gambling activity.

16 Thus a person who gambled at a social
17 game of chance on equal terms with the other
18 participants does not otherwise render material
19 assistance to the establishment, conduct or operation
20 thereof by performing without fee or remuneration,
21 acts directed toward the arrangement or the facilitation
22 of the game, such as inviting persons to play,
23 permitting the use of the premises and supplying cards
24 or other equipment used therein.
25

A person who engages in bookmaking is

1 not a player. Bookmaking means advancing gambling
2 activity by unlawfully accepting bets from members of
3 the public as a business rather than in a casual or
4 personal fashion upon the outcome of future contingent
5 events.

6 Now, the term business, as used in these
7 laws, is to be given its ordinary normal meaning. In
8 a sports bookmaking operation and parlay business,
9 which accepts bets from members of the public, is an
10 illegal gambling business prohibited by New York law.

11 Now, the mere fact, however, that you
12 may find that one or more of the defendants was
13 operating an illegal gambling business in violation of
14 New York law is not enough to find any defendant
15 guilty. Before you can convict any defendant of
16 violating the federal law applicable here, you must
17 find two other facts. One of these, the second fact
18 which the government must prove beyond a reasonable
19 doubt, is that the illegal gambling business involved
20 five or more persons who conducted, financed, managed,
21 supervised, directed or owned all or part of such
22 business.

23 The word "conduct" means to carry on or
24 to operate, or to cause to function, and refers both
25 to high level houses, and to street-level employees.

1 It includes all levels of personnel who participate in
2 an illegal gambling business regardless of how minor
3 their roles, and whether or not they are called writers,
4 collectors, runners, clerks, or employees. It includes
5 agents or middlemen who accept bets from others, and
6 pass them along to a single, central gambling business.
7 It includes otherwise outside bookmakers who accept
8 bets from their own customers, and lay them off to a
9 single central operation on a regular, ongoing,
10 consistent and substantial basis.

11 It does not include anyone, including an
12 outside or independent bookmaker who places a single,
13 or isolated bet for his own customer, or who makes
14 isolated and casual, rather than substantial and
15 regular lay-off bets, or who occasionally exchanges
16 line information with the central gambling operation.

17 In short, a conductor includes all
18 persons who participate in the operation of a
19 gambling business, including those who participate in
20 a network composed of other bookmakers, who join in a
21 cooperative and consistent ongoing relationship with
22 a single central gambling enterprise, and pool their
23 bets, either through fairly regular layoffs, or
24 profit sharing, or consistently and continuously share
25 line information, or systematically transfer a

1 substantial amount of business, or part of the action,
2 or give advice concerning gambling operations.

3 However, the better, player or customer
4 of an illegal gambling business does not conduct the
5 illegal gambling business, even though he engages in
6 the illegal gambling activity by placing a bet or bets,
7 and even though he may be a regular and even a daily
8 customer of the gambling business, and notwithstanding
9 the fact that he may play or bet large amounts of
10 money.

11 The federal law is not aimed at the
12 better, at the player or the customer, but at those
13 who conduct the illegal gambling business.

14 Now, "to finance" means to supply the
15 capital or the financial backing or money to establish
16 or operate or run the business. "Manage" means to run
17 the business, to have charge of, to direct or to have
18 an important voice in the direction and policies of
19 the business. "Supervise" means to oversee or boss
20 the operation. "Direct" means to guide or control or
21 run. "Own" means to have ownership or title in some
22 demonstrable way, such as a share in the profits of
23 the business.

24 Now, you will notice that in stating the
25 acts, such as conduct, supervise, finance, and so forth.

1 which are prohibited by the statute, I have used the
2 word "or" he must conduct, "or" supervise, "or" finance,
3 and so on. It is not necessary, therefore, for the
4 government to prove that the defendant when you are
5 considering did all of these prohibited acts. It is,
6 in itself, enough if you find that he knowingly did
7 any one of them. Nor is it necessary for the govern-
8 ment to prove that five or more persons did all of the
9 prohibited acts.

10 For example, it would be sufficient if
11 the government proved, beyond a reasonable doubt, that
12 three persons conducted the gambling business, and that
13 two others financed it; that would give you the
14 requisite five.

15 The government contends that all of the
16 defendants now on trial, plus James V. Colloca and
17 Leon Cook, for a total of eight persons either
18 conducted or financed or managed, or supervised, or
19 directed, or owned, all or part of the gambling
20 business. And it is for you to decide whether that is
21 the fact.

22 The third fact which the government must
23 prove beyond a reasonable doubt is that the illegal
24 gambling business was a gambling business which had
25 been or remained in substantially continuous operation

1 for a period in excess of 30 days, or that it received
2 profits of more than \$2,000 in any single day.

3 Now, the government contends that the
4 evidence shows that the sports bookie log operation
5 and parlay business involved here was in substantially
6 continuous operation from about September 1, 1943
7 through June 30, 1945. Substantially continuous
8 operation for more than 30 days does not mean that the
9 business must operate every single day for at least
10 31 consecutive days, or that it must necessarily
11 take place in the same physical location. Rather it means
12 that the same illegal gambling business must operate
13 on a regular basis, even at many different locations,
14 for a period in excess of 30 days.

15 Now, you must consider all of the
16 evidence and each defendant separately. If, as to the
17 defendant whom you are considering, you find that the
18 government has failed to prove beyond a reasonable
19 doubt each of the three facts which I have instructed
20 you the government is required to prove, then you
21 must find that defendant not guilty on Count II.

22 On the other hand if, as to the
23 defendant whom you are considering, you find that the
24 government has proved beyond a reasonable doubt all
25 three of the facts which I have instructed you the

1 government is required to prove, then you should
2 convict that defendant on Count II.

3 We will now turn to Counts III, IV and V.

4 The law involved in these counts makes
5 it a crime for any person to use any facility, such as
6 a telephone in interstate commerce, with the intent to
7 promote, manage, establish, carry on or facilitate
8 the promotion, management, establishment or carrying
9 on of any business enterprise involving gambling which
10 operates in violation of state or federal law and,
11 thereafter to perform or attempt to perform any act of
12 promoting, managing, establishing, carrying on or
13 facilitating the promotion, management, establishment
14 or carrying on of the gambling enterprise.

15 Each of Counts III through V charges
16 that the defendant D'Agostino and Camerano violated
17 this law by using telephone facilities between the
18 State of Nevada and the State of New York, to
19 disseminate sports line information for a gambling
20 enterprise which was operating in violation of state
21 and federal law. These counts also charge that the
22 defendant Grezo aided and abetted D'Agostino in
23 committing the crime.
24

25 Specifically, Count III alleges such a
telephone call between D'Agostino and Camerano on or

1 about January 4, 1975 at approximately 12:25 p.m.

2 Count IV alleges such a telephone call
3 between those two defendants on or about January 4, 1975
4 at approximately 5 p.m.

5 And Count V alleges such a telephone
6 call between those two defendants on or about
7 January 5 at approximately 12:30 p.m.

8 Now, with respect to counts III through
9 V, you again must consider each count, and each
10 defendant named in that count separately. We will
11 first consider D'Agostino and Camerano.

12 In order to convict either or both of
13 them on the count which you are considering, the
14 government must prove the following three facts beyond
15 a reasonable doubt:

16 first, that the defendant used a tele-
17 phone facility to talk to someone in another state
18 with the intent to promote or to facilitate the
19 promotion, management, establishment or carrying on
20 of a business enterprise involving gambling.

21 Now, here it is not necessary for the
22 government to prove that the defendant had knowledge
23 that the telephone call was from out of state or that
24 he knew that by making or accepting the call he was
25 violating the law.

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However, with respect to the defendant's intent, it is necessary for the government to prove that the interstate facility, here, an interstate telephone facility, was in fact used and that the defendant used it, or caused it to be used, and that he intended to promote, or to facilitate the promotion, management, establishment or carrying on of the illegal gambling activity.

You will notice again that I used the word "or", in listing the prohibited acts and the prohibited intent. The government need, therefore, only prove that the defendant's intent was to do any of the things that I have listed.

Now, the government contends that the purpose of the interstate telephone calls between Nevada and New York was to disseminate line information. It is sufficient, if you find that the defendant intended the purpose of the line information was to facilitate or in any way help or further the gambling activity. It is not necessary that the government prove that the line information was absolutely essential to the operation of the gambling activity.

The second fact which the government must prove beyond a reasonable doubt as to each of Counts III through V is that the gambling enterprise was in

1 violation of either federal law or state law. Here,
2 you will recall and apply my earlier instructions on
3 those subjects in discussing Count II, that is, that
4 in the state of New York a person is guilty of
5 promoting gambling in at advances or profits from
6 gambling activity and that advancing gambling activity
7 essentially is any kind of conduct in any phase of the
8 gambling operation, no matter how small or low level,
9 except that of a bettor or player.

10 Disseminating or receiving line information
11 for a gambling business is advancing gambling activity
12 under this law.

13 You will also recall my earlier
14 instructions as to what kind of gambling enterprise is
15 in violation of the law of the United States, and if
16 you find in Count II that such an illegal gambling
17 business existed, then that finding alone will satisfy
18 the second fact with respect to Counts III through V.

19 The third fact which the government must
20 prove beyond a reasonable doubt as to each of Counts
21 III through V is that after the alleged interstate
22 telephone conversation, the defendant knowingly
23 performed or attempted to perform any act of promoting
24 or of facilitating the promotion, management, es-
25 tablishment or carrying on of a business enterprise

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involving gambling. Here, again, you will notice that I have used the word "or". The government need only prove any single prohibited act in furtherance of the gambling enterprise in order to satisfy this third fact.

Now, in discussing Counts III through V, we have been referring only to the defendants D'Agostino and Camerano who are alleged to be the actual participants in each of the three interstate telephone calls. Under the law, D'Agostino and Camerano are called "principals" in the criminal offense.

We will now discuss the defendant Grezo, who is named as an aider and abettor in each of Counts III through V.

The government contends that Grezo aided and abetted in the offense charged in each of Counts III through V, by discussing line problems with D'Agostino and by using the line information provided to him by Camerano, through D'Agostino. The government does not have to prove that Grezo was a participant in any interstate telephone call, or that Grezo had knowledge that an interstate facility was being used.

The defendant Grezo contends that he was

1 simply obtaining live information in order to play the
2 middle, and that he was a core player. That issue is
3 for you to decide.

4 The law provides that a person who aids
5 and abets, conceals, covers, induces or procures the
6 commission of a crime by another is just as guilty of
7 that crime as if he committed it himself.

8 Accordingly, you may find the defendant
9 Greco guilty of the crime charged in the count which
10 you are considering, if you find beyond a reasonable
11 doubt that he aided and abetted V'Agostino in the
12 commission of the crime charged in that count, and that
13 he was acting other than as a player in seeking or
14 using live information.

15 Before you can convict Greco for aiding
16 and abetting, you must find that the crime charged in
17 the count which you are considering was committed by
18 another, here V'Agostino, and that Greco consciously
19 associated himself with the criminal venture, with the
20 intent that his conduct would help him succeed.

21 You must be convinced beyond a reasonable
22 doubt that Greco was knowingly and intentionally doing
23 something to aid the crime or to forward the crime of
24 the other person; here V'Agostino; that Greco was a
25 conscious, knowing participant in the crime, with a

1 stake in its success, rather than a mere witness, player,
2 spectator or bystander on the scene of a crime when it
3 was committed by another, D'Agostino.

4 With respect to each of Counts III
5 through V, you must consider all of the evidence and
6 each count and each defendant separately. As to the
7 defendants, D'Agostino and Canzano, if you find as to
8 the defendants when you are considering that the
9 government has failed to prove beyond a reasonable
10 doubt each of three facts which I have instructed you
11 it is required to prove, then you must acquit that
12 defendant on that count. —

13 On the other hand, as to the defendants
14 D'Agostino and Canzano, if you find that the govern-
15 ment has proved beyond a reasonable doubt all three
16 of the facts which I have instructed you it is
17 required to prove, then you may convict that defendant
18 on that count.

19 As to the defendant Grezo, if you find
20 that the government has failed to prove beyond a
21 reasonable doubt each of the three facts which I have
22 instructed you it is required to prove as to the
23 defendant D'Agostino on the count which you are
24 considering, or that the government has failed to prove
25 that Grezo knowingly aided and abetted another,

1 D'Agostino, in the commission of the crime, then you
2 must find Greco not guilty on that count.

3 On the other hand, as to the defendant
4 Greco, if you find that the government has proved
5 beyond a reasonable doubt all three of the facts which
6 it is required to prove as to the defendant D'Agostino
7 on the count which you are considering, and that the
8 government has proved that Greco knowingly aided and
9 abetted D'Agostino in the commission of the crime, then
10 you may convict the defendant Greco on that count.

11 We will now turn to the first count of
12 the indictment which charges a conspiracy.

13 Count 1 charges the six defendants now
14 on trial, together and with each other and with James
15 V. Colizza and Leon Cook, who are named as co-conspirators,
16 and with numerous other persons whose exact
17 identity are to the Grand Jury unknown, with conspiring
18 to conduct, finance, manage, supervise and own all or
19 part of an illegal gambling business.

20 Here, again, you must consider each
21 defendant separately. In order to convict the
22 defendant whom you are considering on Count 1, the
23 government must prove the following three facts beyond
24 a reasonable doubt:

25 First, the existence of a conspiracy as

1 charged in the indictment, sometime between September
2 1, 1973 and June 26, 1975, in the Northern District of
3 New York, for the purpose of committing the crime of
4 conducting, financing, managing, supervising, directing,
5 or owning all or part of an illegal gambling business
6 as I have defined that crime in my discussion of
7 Count II. Specifically, the government must prove
8 the existence of a conspiracy which contemplated the
9 crime of conducting an illegal gambling business which
10 was prohibited by the law of New York, which involved
11 or would involve five or more persons, and which was
12 intended to continue in operation for more than 30
13 days, or to have a gross revenue of at least \$2,000
14 in any single day.

15 Second, that the defendant whom you are
16 considering joined the conspiracy with knowledge of its
17 illegal purpose.

18 Third, that any member of the conspiracy
19 committed at least one of the overt acts set forth in
20 the indictment. I will now discuss what these facts
21 mean.

22 The first fact which the government must
23 prove beyond a reasonable doubts is the existence of
24 the conspiracy. Now, what is a conspiracy? A
25 conspiracy, for our purpose, is simply a combination

1 or an agreement among two or more people to violate
2 the law as charged in this indictment. Thus, a
3 conspiracy is a kind of a partnership in criminal
4 purposes and it is usually secret in its origin and in
5 its execution.

6 The gist of the crime is the combination
7 or agreement among two or more people to violate the
8 law. This does not mean that two or more persons must
9 meet and sign some kind of an agreement, or that they
10 must sit down and agree in so many words on what their
11 unlawful scheme is to be, or how they are going to carry
12 it out.

13 When persons enter into a combination or
14 agreement to violate the law, only fools would put it
15 in writing. This is necessarily left to implicit
16 understandings and tacit understanding. Conspirators
17 do not proclaim their plot, or publicly announce their
18 purpose. The very nature of a conspiracy calls for
19 secrecy and intrigue.

20 The first fact is satisfied, therefore,
21 if you find beyond a reasonable doubt that any two or
22 more people in any way intentionally combined, or
23 agreed to a common plan knowingly and intentionally to
24 conduct, finance, manage, supervise, direct or con-
25 sist of an illegal gambling business prohibited by

1 New York law involving five or more people and
2 intended to continue for more than 30 days, or to have
3 a gross revenue of at least \$2,000 in any single day.

4 Now, in determining whether there was
5 such a combination, understanding or agreement here,
6 you should consider all of the evidence about each
7 defendant's conduct, acts and statements. You should
8 consider not only what was said or done, but also how
9 it was said or done. From the point of view of the
10 law, there is danger to the public when two or more
11 people combine to do something that is unlawful. The
12 danger is greater than if the lone criminal acts by
13 himself because in numbers there is strength, and two
14 or more people are able to accomplish crimes that are
15 more difficult and more harmful to the public.

16 Because of this, a conspiracy to commit
17 a crime is a distinct crime, in and of itself, separate
18 and apart from the crime which it is the object of the
19 conspiracy to accomplish. In other words, the agree-
20 ment to enter into this illegal gambling business, in
21 and of itself, is a crime, whether or not the
22 defendants ever actually carried out their plan,
23 whether or not they ever, in fact, entered into an
24 illegal gambling business. Thus you may find that a
25 conspiracy exists, even though the purpose of the

1 conspiracy is never accomplished.

2 Proof, however, of the accomplishment of
3 the purpose of the conspiracy is probably the most
4 persuasive evidence of the existence of the conspiracy,
5 itself. The period of time charged in the crime here
6 runs from September 1, 1973 through June 26, 1975.

7 It is not necessary for the government
8 to prove that the conspiracy alleged started and ended
9 on those specific dates. It is sufficient if you find
10 that the conspiracy was formed, and that it existed
11 for some substantial time within the period set forth
12 in the indictment.

13 Now, you will recall that the second fact
14 which the government must prove beyond a reasonable
15 doubt is that the defendant joined the conspiracy with
16 knowledge of its illegal purpose.

17 When I say "joined the conspiracy," I do
18 not mean that a defendant has to file some kind of an
19 application, or that he has to sit down and say, "let
20 me in" or anything of that nature. However, before one
21 can be found to be a member of a conspiracy, he must
22 know of the existence of the conspiracy, and of its
23 unlawful purpose to conduct an illegal gambling
24 business, as charged in this indictment and as I have
25 defined the crime of conducting an illegal gambling

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business in our discussion of Count II, and he must voluntarily and knowingly join in the plan with an intent to combine with others to violate the law, and he must knowingly promote the scheme, or have some kind of a stake in its success.

In this connection, you will recall my earlier instructions as to what constitutes knowledge, willful and intentional conduct in discussing Count II, and apply those instructions here.

Here, in determining the knowledge and intent of a defendant, it is obviously impossible to look into his mind. However, intent and knowledge may be inferred from the way a defendant acts, by his statements, and by all the surrounding circumstances. Thus, the old adage "Actions speak louder than words" applies here.

In this connection, you may not rely upon statements of one defendant to find that another defendant was a member of the conspiracy. You must determine the membership of a particular defendant solely from the evidence concerning his own actions, his own conduct, his own statements.

The mere fact that a defendant may witness a crime, or be present when a crime is committed by others, or that he may attend a meeting or unwittingly

1 assist the criminal venture, or have an association or
2 friendship with a member of a conspiracy, or even
3 though he participates in an isolated gambling
4 transaction with a member of a conspiracy is not, in
5 itself, enough to make him a conspirator unless you
6 first find, beyond a reasonable doubt, that he knew of
7 the conspiracy and that he deliberately and inten-
8 tionally joined in the criminal venture with knowledge
9 of its unlawful purpose and with a stake in its success.

10 Now, one may become a member of a
11 conspiracy without knowledge of all of the details, or
12 all of the operations of the conspiracy. One defendant
13 may know only one other member of the conspiracy. Yet
14 if he knowingly cooperates to further the illegal
15 purpose of the conspiracy, with knowledge that others
16 have joined together to violate the law, he becomes a
17 member, although his role may be only an insignificant
18 or minor one.

19 Now, if you find that a defendant did
20 join the conspiracy with knowledge of its illegal
21 purpose, then he is bound by what other say and do in
22 furtherance of the objects of the conspiracy, even
23 though he is not present, provided he is still a
24 member. You will remember that each conspirator is the
25 agent or partner of every other conspirator.

1 What one does to promote the illegal
2 plan or illegal agreement binds every other member of
3 the conspiracy.

4 Now, the third fact which the government
5 must prove beyond a reasonable doubt is the commission
6 by any conspirator of at least one overt act in
7 furtherance of the objects of the conspiracy. An
8 overt act means any act by any member of the conspiracy
9 in an effort to accomplish some purpose of the con-
10 spiracy.

11 The reason the law of conspiracy requires
12 an overt act is because a person might agree to commit
13 a crime and then change his mind. Therefore, before a
14 defendant can be convicted of a conspiracy, one or
15 more of the conspirators must have taken at least one
16 step, or performed at least one single act, toward
17 carrying out the unlawful intent to commit the crime.
18 That step may, in itself, be perfectly innocent.

19 The indictment in this case enumerates
20 seven overt acts allegedly done in furtherance of the
21 conspiracy in order to effect the objects of the
22 conspiracy, and they are:

23 One, that on or about October 30, 1974,
24 Samuel Ebare and James J. Colloca met in the Chartroom,
25 in Oswego, New York, and had a discussion concerning a

1 debt.

2 Two, on or about November 5, 1974,
3 Joseph T. D'Agostino spent approximately one and a
4 half hours at the residence of Leon Cook at 214 Golf
5 Road, Syracuse, New York, conducting the aforesaid
6 illegal gambling business over Cook's telephone.

7 Three, on or about December 21, 1974,
8 Joseph T. D'Agostino had a telephone conversation with
9 Charles T. Grezo about matters relating to the operation
10 of the aforesaid illegal gambling business in which
11 D'Agostino accepted lay-off wagers from Grezo.

12 Four, on or about January 3, 1975,
13 Joseph T. D'Agostino distributed line or odds
14 information over the telephone to Raymond Czerwinski,
15 and they discussed other matters relating to the
16 operation of the aforesaid illegal gambling business.

17 Five, on or about January 4, 1975,
18 Richard Michael Beach and Joseph T. D'Agostino had a
19 telephone conversation in which they discussed the
20 status of the aforesaid illegal gambling business
21 concerning a particular game, and during which
22 D'Agostino gave Beach the line, or odds information on
23 numerous sporting events.

24 Six, on or about January 5, 1975, Louis
25 M. Camerano telephoned Joseph T. D'Agostino from

1 Las Vegas, and Camerano gave D'Agostino line or odds
2 information on numerous sporting events for use in the
3 aforesaid illegal gambling business.

4 Seven, on or about January 6, 1975,
5 Joseph T. D'Agostino and Samuel Ebare had a telephone
6 conversation in which Samuel L. Ebare gave Joseph T.
7 D'Agostino instructions with respect to the pay-off of
8 a winning bettor in the aforesaid illegal gambling
9 business, and they arranged a meeting.

10 Now, the government contends that the
11 meetings and telephone calls referred to in these overt
12 acts have been proved beyond a reasonable doubt from
13 the tape recordings, and from physical surveillance by
14 FBI agents. That, of course, is for you to decide.

15 You will note that the overt acts
16 charged are innocent, in and of themselves. Nevertheless,
17 if an overt act was performed by any member of the
18 conspiracy during the existence of the conspiracy, and
19 in furtherance of its unlawful purpose, then that act
20 was sufficient to satisfy the government's burden of
21 proving the third fact.

22 The government must prove to you beyond a
23 reasonable doubt that at least one of the overt acts
24 which I have just read to you was committed by one or
25 more of the conspirators and that that act was done in

1 furtherance of the conspiracy.

2 Now, in this connection, the government
3 does not have to prove that all of the defendants
4 committed an overt act, or that all of the overt acts
5 were committed. It is required to prove one overt act
6 by any one member of the conspiracy.

7 Likewise, it is sufficient if the dates
8 alleged in the overt acts are substantially similar
9 within a few weeks of the dates mentioned in the
10 testimony. The same is true as to the place mentioned
11 in the overt acts. It must be substantially similar.
12 There is no requirement that it be exactly as alleged
13 in the indictment.

14 With respect to Count I, therefore, you
15 must consider all of the evidence and each defendant
16 separately. If, as to the defendant whom you are
17 considering, you find that the government has failed to
18 prove beyond a reasonable doubt each of the three facts
19 which I have instructed you it is required to prove,
20 then you must acquit that defendant on Count I.

21 On the other hand, if as to the defendant
22 whom you are considering, you find that the government
23 has proved beyond a reasonable doubt all three of the
24 facts which I have instructed you it is required to
25 prove, then you should convict that defendant on Count

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I.

You are instructed that the question of possible punishment of a defendant in the event of a conviction is no concern of yours, and it should not enter into or influence your deliberations in any way. The duty of imposing sentence, in the event of a conviction, rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case, and determine the guilt or non-guilt of the defendant solely upon the basis of that evidence.

When you retire to the jury room, you should elect one of your number to serve as your foreman or forelady, and to address whatever communications, or to announce your verdict to the Court.

Treat one another with consideration and respect, as I know that you will. If differences of opinion arise, your discussions should be dignified, calm and intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case, as you collectively remember it, and the law as I have given it to you in this charge.

You are each entitled to your own opinion. No juror should acquiesce in a verdict

1 against his individual judgment. Nevertheless, I
2 would point out that no one should enter the jury room
3 with such pride of opinion that he would refuse to
4 change his or her mind, no matter how convincing or
5 how persuasive, or how intelligent the argument of
6 another juror or jurors.

7 Discussion and deliberation lie at the
8 very heart of our American Jury process, and your
9 deliberations should be approached in that spirit.
10 Talk out your differences. Each of you should, in
11 effect, decide the case for himself or herself, after
12 thoroughly reviewing the evidence, and frankly
13 discussing it with your fellow jurors, with an open
14 mind, and with a desire to reach a verdict. If you do
15 that, you will be acting in the true democratic process
16 of the American Jury system.

17 There are 12 of you on this jury. The
18 alternate jurors will be excused before you retire for
19 your deliberations. Any verdict must be the unanimous
20 verdict of all of you as to each defendant and each
21 count in which that defendant is named, and it must
22 represent the honest conclusion of each of you.

23 I submit the case to you with every
24 confidence that you will fully measure up to the oath
25 which you took as members of the jury to decide the

1 issues submitted to you fairly and impartially, and
2 without fear or favor.

3 And to guide you in your deliberations,
4 I will send in a copy of the indictment.

5 Now, I submit the case to you with every
6 confidence that you will fully measure up to your oath.

7 Now, members of the jury, if you find
8 that the government has failed to establish the guilt
9 of any defendant beyond a reasonable doubt, you should
10 find that defendant not guilty.

11 If you find that a defendant has not
12 violated the law, you should not hesitate, for any
13 reason, to render a verdict of not guilty as to him.

14 But on the other hand, if you find that
15 the government has established the guilt of a defendant
16 beyond a reasonable doubt, you should not hesitate,
17 because of sympathy or any other reason, to render a
18 verdict of guilty.

19 Your foreman or forelady then will return
20 a verdict, an oral verdict in open court of either
21 guilty or non-guilty as to each defendant on each
22 count in which that defendant is named.

23 Are there any exceptions, gentlemen? If
24 so, I will hear you at the bench.

25 MR. FISHER: Your Honor, could we

1 approach the bench for a moment, please?

2 (Whereupon the following took place at
3 the side bar, out of the hearing of the jury.)

4 MR. FISHER: Your Honor, I do not have
5 any exceptions but on Count II, when the count was
6 explained as to the 30 days or \$2,000, you hesitated
7 there, and you used the word "profit," and you said,
8 "\$2,000 profit" and I would ask the Court to clarify
9 that as to revenue and it would be \$2,000 gross revenue.

10 THE COURT: Thank you.

11 (Whereupon the following took place
12 before the Court and the jury.)

13 THE COURT: In discussing Count II I
14 said that the government must prove that the business
15 was in continuous operation for more than 30 days, and
16 then I said, "or had a profit of \$2,000." I am in
17 error. It is a gross revenues of \$2,000, in any
18 single day.

19 All right, swear the marshals.

20 (Whereupon the marshals were sworn by
21 the Clerk.)

22 THE CLERK: The alternate jurors are now
23 excused from further consideration of this
24 case.
25

THE COURT: The jury will now retire.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

Docket No. 76-1449

CHARLES P. GREZO, JOSEPH D'AGOSTINO,
SAMUEL EBARE and RICHARD MICHAEL
BEACH,

Defendants-Appellants.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS:
CITY OF SYRACUSE)

DORY FIRLEY, being duly sworn, deposes and states that she is employed as a secretary in the office of Paul R. Shanahan, Esq., attorney for Samuel Ebare, defendant-appellant in the above entitled action; that on the 6th day of July, 1977 she served two copies of Brief and Appendix for Appellant Ebare upon Jeffrey C. Fisher, Esq., Special Attorney, Buffalo Field, Office, Buffalo, New York; and two copies each upon Norman A. Palmiere, Esq., attorney for appellant, Charles P. Grezo, at 440 One East Main Street, Rochester, New York 14614; David B. Weinstein, Esq., attorney for appellant, Richard Michael Beach, at 410 Metcalf Plaza, Auburn, New York 13021; John R. Rinaldi, Esq., University Building, Syracuse, New York 13202, attorney for appellant, Joseph D'Agostino, by mailing copies as aforesaid to each of said attorneys at the addresses designated by them for that purpose in properly addressed wrappers and deposited in a post office box maintained by the United States Post Office in the City of Syracuse, New York; that deponent is not a party to this

action and is over twenty-one years of age.

Ray Filey

Subscribed and sworn to before me
this 6th day of July, 1977.

David Damico
Notary Public, Onondaga County
J. DAVID DAMICO No. 4500412
Notary Public, State of New York
Qualified in Onondaga County
My Commission Expires March 30, 1980

SYRACUSE, NEW YORK 13202

ATTORNEYS AT LAW

R. J. & P. R. SHANAHAN

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